

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Derrick Timothy Davis, # 251381,)	Civil Action No. 2:20-0652-RMG
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
South Carolina Department of Corrections,)	
Bryan P. Stirling, and Henry McMaster,)	
)	
Defendants.)	
_____)	

Before the Court is the Magistrate Judge’s Report and Recommendation (“R & R”) (Dkt. No. 11) recommending that this action be dismissed. For the reasons set forth below, the Court adopts the R & R as the order of the Court and dismisses Plaintiff’s claim without prejudice.

I. Background

Plaintiff Derrick Davis is an incarcerated person proceeding *pro se* to allege that Defendants violated his civil rights under 42 U.S.C. § 1983. He challenges the calculation of his parole eligibility and max-out date. (Dkt. No. 1.) Davis has two additional pending civil actions that bring almost identical claims to this action. (Civil Action No. 20-0097, No. 20-0653.)

In February 2020, Davis stated he filed the complaint in this action by mistake and requested it be returned to him. (Dkt. No. 6.) The Magistrate Judge issued an order stating Davis’s request would be construed as seeking to dismiss his case and, in an abundance of caution, requested Davis’s confirmation of his intention. (Dkt. No. 7.) Davis confirmed that he seeks to dismiss this action. (Dkt. No. 9.) Accordingly, the Magistrate Judge now recommends that the action be dismissed under Rule 41 of the Federal Rules of Civil Procedure. Davis filed no objections to that recommendation.

II. Legal Standard

The Magistrate Judge makes a recommendation to the Court that has no presumptive weight and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where there are no objections to the R & R, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection . . . we do not believe that it requires any explanation.”).

III. Discussion

“[T]he plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). “Unless the notice or stipulation states otherwise, the dismissal is without prejudice.” Fed. R. Civ. P. 41(a)(1)(B). Davis requested and confirmed that he seeks to terminate this action. “[P]ro se filings are to be liberally construed[.]” *Skillings v. Knott*, 251 F. Supp. 3d 998, 1001 (E.D. Va. 2017), *citing Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Court finds that the Magistrate Judge correctly concluded that this action may be dismissed under Rule 41.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R (Dkt. No. 11) as the order of the Court and **DISMISSES WITHOUT PREJUDICE** this action.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

May 13, 2020
Charleston, South Carolina